

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 27, 2006

In reply refer to:
Docket No. RP01-245-016

Scott C. Turkington, Esq.
Director, Rates & Regulatory
Transcontinental Gas Pipe Line Corporation
P. O. Box 1396
Houston, Texas 77251

RE: Transcontinental Gas Pipe Line Corporation
Docket No. RP01-245-016

Dear Mr. Turkington:

1. On September 25, 2006, Transcontinental Gas Pipe Line Corporation (Transco) filed a Stipulation and Agreement (Agreement) to resolve two reserved issues from the April 12, 2002 Stipulation and Agreement approved in Docket Nos. RP01-245, *et al.*¹ On October 16, 2006, a number of parties filed initial comments supporting the Agreement, and on October 23, 2006, reply comments were filed by Transco. On October 30, 2006, the Presiding Administrative Law Judge (ALJ) certified the Agreement to the Commission as uncontested.²

2. This Agreement is the result of extensive negotiations and reflects the parties' settlement to resolve the issue of the allocation of certain storage costs between and among storage and transportation services (Storage Cost Allocation Issue), and the issue

¹ *Transcontinental Gas Pipe Line Corp.*, 100 FERC ¶ 61,085 (2002). These two issues were litigated and subject of an initial decision in Transco's general section 4 rate case in Docket No. RP01-245-000. However, the Storage Cost Allocation Issue was remanded for further proceedings by a May 30, 2006 Order. *Transcontinental Gas Pipe Line Corp.*, 115 FERC ¶ 61,268 (2006).

² *Transcontinental Gas Pipe Line Corp.*, 117 FERC ¶ 63,025 (2206).

of the unbundling of the Emergency Eminence Storage Withdrawal Service (Emergency Eminence Unbundling issue).

3. Article I of the Agreement provides that the participants agree to settle and resolve the Storage Cost Allocation Issue and the Emergency Eminence Unbundling Issue. Article I, section A provides that Transco shall volumetrically allocate a fixed amount of the respective annual costs of service of the Rate Schedules WSS, GSS, LSS, SS-2 and S-2 storage services to Transco's system transportation, incremental transportation and the transportation component of the bundled storage services. Section A also addresses the duration of the resolution of the Storage Cost Allocation Issue, and how any change in the costs incurred from upstream providers will be handled.

4. Article I, section B provides that Transco shall remove from its cost of service the cost of service of the Hester Storage Field as of the effective date of the Agreement. This provision does not affect Transco's right to seek recovery of the Hester Asset Retirement Obligation (ARO) cost in Docket No. RP06-569-000. Further, nothing in this Agreement limits participants' rights to take any position in that proceeding with respect to the Hester ARO costs.

5. Article I, section C states that Transco provided to each Rate Schedule FT (firm transportation) customer currently eligible for Emergency Eminence service an allocation of its proportionate share of the Emergency Eminence service capacity, as set forth in Appendix A attached to the Agreement. Each eligible Rate Schedule FT customer has elected: 1) to turn back to Transco, in whole or in part, its allocated share of the Emergency Eminence capacity; 2) to convert, in whole or in part, its allocated share of the Emergency Eminence capacity to Eminence Storage Service; or 3) to retain, in whole or in part, its allocated share of the Emergency Eminence capacity for service under a new Rate Schedule Emergency Eminence Storage Withdrawal Service with the same term and notice provisions as the underlying FT contracts from which the Emergency Eminence service was unbundled.

6. Article I, section D states that the participants agree that Transco shall retain for purposes of system flexibility the Emergency Eminence allocations that eligible customers have elected to turn back to Transco. The cost of service associated with this turned-back capacity will be allocated among system transportation, incremental transportation and the transportation component of the bundled storage services in the same manner prescribed by Article I, section A. Should additional Eminence capacity be turned back to Transco during the effectiveness of the Agreement, Transco may elect to retain such capacity for system flexibility and to seek recovery of the associated costs in rates through a filing under section 4 of the Natural Gas Act. In the event that Transco seeks recovery in rates of the costs of more than 2.5 Bcf of additional turned-back Eminence storage capacity, all parties will have the right to propose changes in the storage cost allocation established by the Agreement.

7. Articles II and III of the Agreement are provisions governing standard reservations, approval by the Commission, and effectiveness of the Agreement. Article III of the Agreement provides that it shall become effective and binding on the later of (i) March 1, 2007, or (ii) the first day of the first month commencing at least 30 days after a Commission order approving this Agreement as to all its terms and conditions without material modification becomes no longer subject to rehearing.

8. In the Explanatory Statement to the Agreement, Transco stated that, to the extent the Commission, after approval of the Agreement, considers any change to then effective provision(s) of the Agreement, it believes that the standard of review for any such proposed change shall be the public interest standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Co.*, 350 U.S. 332 (1956) and *Fed. Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). No adverse comments were filed on this issue. As a general matter, parties may bind the Commission to a public interest standard.³ Under limited circumstances, such as when the agreement has broad applicability, the Commission has the discretion to decline to be so bound.⁴ In this case we find that the public interest standard should apply because it provides the parties needed certainty.

9. In its reply comments, Transco verified that the Agreement does not foreclose any participant's or party's right to take any position in future proceedings with respect to the issues relating to the Hester Storage Field.

10. The Commission finds that the Agreement is fair and reasonable, and in the public interest. The Agreement is therefore approved, to become effective as proposed. Approval of the Agreement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

By direction of the Commission. Commissioner Kelly dissenting in part with a separate statement attached.
Commissioner Wellinghoff dissenting in part with a separate statement attached.

Magalie R. Salas,
Secretary.

³ *Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 960-62 (1st Cir. 1993).

⁴ *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 286-87 (D.C. Cir. 2006).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Transcontinental Gas Pipe Line Corp.

Docket No. RP01-245-016

(Issued November 27, 2006)

KELLY, Commissioner, *dissenting in part*:

Transcontinental Gas Pipe Line Corporation states in the Explanatory Statement to this settlement that the standard of review for any future change to the agreement considered by the Commission shall be the *Mobile-Sierra* “public interest” standard. In the absence of an affirmative showing by the parties and reasoned analysis by the Commission regarding the appropriateness of approving the “public interest” standard of review to the extent future changes are sought by a non-party or by the Commission acting *sua sponte*, I do not believe the Commission should approve this contract provision.

Under the Federal Power Act and the Natural Gas Act, rates, terms and conditions of service must be “just and reasonable” and not unduly discriminatory or preferential. Parties to a contract or agreement may waive their statutory rights to the “just and reasonable” standard and request that the Commission instead apply the higher “public interest” standard under the *Mobile-Sierra* doctrine,¹ with respect to future changes sought by the one of the parties after the contract or agreement has been approved by the Commission.

In some cases, contracting parties request that the Commission apply the “public interest” standard of review to any future changes sought by the Commission acting *sua sponte* or on behalf of a non-party.² Courts have found

¹ This doctrine is named after the Supreme Court’s rulings in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) (*Mobile*) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Sierra*).

² Until fairly recently, the Commission did not approve agreements whereby the parties sought to bind the Commission to a “public interest” standard of review with respect to the Commission acting *sua sponte* or at the request of non-parties to change rates, terms and conditions, in order to protect non-parties. *See, e.g., ITC Holdings Corp.*, 102 FERC ¶ 61,182 at P 77, *reh’g denied*, 104 FERC ¶ 61,033 (2003); *Westar Generating, Inc.*, 100 FERC ¶ 61,255 at 61,917 (2002); *Niagara Mohawk Power Corporation*, 97 FERC ¶ 61,018 at 61,060 (2001); *Turlock Irrigation District*, 88 FERC ¶ 61,322 at 61,978 (1999);

that the Commission has the authority not to accept such a request.³ In making such a request, I believe the contracting parties must affirmatively demonstrate why it is consistent with the Commission's fulfillment of its statutory responsibilities under FPA sections 205 and 206, or NGA sections 4 and 5. In conducting its initial review of agreements where the parties seek to hold the Commission and non-parties to the higher "public interest" standard of review with respect to future changes, the Commission should consider whether this standard is appropriate within the context of the particular contract or agreement. Under certain circumstances, I believe it may be appropriate for the Commission to approve such provisions, as I stated in my concurring statement in *Entergy Services, Inc.*;⁴ however, the appropriateness of such a provision has not been demonstrated under the facts of this case.

This order concludes without reasoned analysis that the "public interest" standard should apply in this case. In addition, the order implies that the case law regarding the applicability of the *Mobile-Sierra* "public interest" standard is clear. In fact, it is not. Courts have recognized that "cases, even within the D.C. Circuit . . . do not form a completely consistent pattern."⁵ Furthermore, I do not agree with this order's characterization of the recent *Maine PUC v. FERC* case, as restricting the Commission's discretion regarding the application of the "public interest" standard only "under limited circumstances."

Accordingly, I respectfully dissent in part from this order.

Suedeem G. Kelly

Montana Power Company, 88 FERC ¶ 61,019 at 61,051 (1999); and *Carolina Power & Light Co.*, 67 FERC ¶ 61,074 at 61,205 (1994).

³ See, e.g., *Maine PUC v. FERC*, 454 F.3d 278 (D.C. Cir. 2006).

⁴ 117 FERC ¶ 61,055 (2006).

⁵ See *Boston Edison Co. v. FERC*, 233 F.3d 60, 67 (1st Cir. 2000).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Transcontinental Gas Pipe Line Corporation

Docket No. RP01-245-016

(Issued November 27, 2006)

WELLINGHOFF, Commissioner, dissenting in part:

The parties in this case have asked the Commission to apply the “public interest” standard of review when it considers future changes to the instant settlement that may be sought by any of the parties, a non-party, or the Commission acting *sua sponte*.

Because the facts of this case do not satisfy the standards that I identified in *Entergy Services, Inc.*,¹ I believe that it is inappropriate for the Commission to grant the parties’ request and agree to apply the “public interest” standard to future changes to the settlement sought by a non-party or the Commission acting *sua sponte*. In addition, for the reasons that I identified in *Southwestern Public Service Co.*,² I disagree with the Commission’s characterization in this order of case law on the applicability of the “public interest” standard.

For these reasons, I respectfully dissent in part.

Jon Wellinghoff
Commissioner

¹ 117 FERC ¶ 61,055 (2006).

² 117 FERC ¶ 61,149 (2006).